IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/10/2002

CORAM

THE HONOURABLE MR. JUSTICE A. PACKIARAJ

Criminal Original Petition No.6394 of 2001

C.R.Irani
Editor in chief
Statesman House
4,Chowranghee Square
Calcutta 700 001 ..... Petitioner

-Vs-

Indian Institute of Technology
Guindy, Madras-36,
rep. by its Registrar
Professor M.R.Pranesh ..... Respondent

PRAYER: Petition filed to call for the records and quash all further proceedings against the petitioner in CC No.7715 of 2000 on the file of the IX Metropolitan Magistrate, Madras.

For petitioner : Mr.Ramasubramanian for
M/s Ram and Ram

For respondents : Mr.Vijayakumar for
M/s. Pais Lobo & Alvares

:O R D E R

This petition has been filed by Mr.C.R.Irani, Editor in Chief of the News Paper "Statesman", to quash the proceedings in CC No.7715 of 20 00 on the file of the IX Metropolitan Magistrate, Chennai. The petitioner, who is the Editor-in-Chief, has been prosecuted along with two others Ms. Jaya Menon, Correspondent and Mr.Sibi Thomas, Publisher of the said news paper, who are not before this court, for offence under Section 500, 501, 502 r/w 34 and 120(b) of IPC.

2.The brief facts of the case are as follows:-

a)The complainant namely, the Indian Institute of Technology, Madras

has been maintaining a very high standard in technological education in India and has acquired a name for its academic excellence through out the world and as such, a publication was made in the newspaper "Statesman" dated 9.8.2000 under the caption "Andhra Tribal wins battle against Indian Institute of Technology". The said publication reads as follows:-

ANDHRA TRIBAL GIRL WINS BATTLE AGAINST IIT
'TEACHER PUNISHED SUJEE TEPPAL FOR BEING TOO SMART'
Chennai,Aug.8 - A tribal girl from Andhra Pradesh, Miss Sujee Teppal, won admission last week to the five-year "Dual Degree Programme" for B.Tech and M.Tech in the communcations engineering programme of IIT, Madras, after waging a bitter battle against the institute.

The Periyar Dravidar Kazhagam, an offshoot of Periyar's Dravidar Kazhagam, accused the IIT of "deliberately" failing the girl in Physics after the one year preparatory course for B.Tech.

Sujee had reportedly scored brilliantly in Chemistry and Mathematics, raising doubts about the evaluation of her Physics Paper.
Inquiries showed that she might have been deliberately failed in the paper. Highly placed sources said the Physics teacher "punished" her for being too smart for him, using easier methods to solve problems.

The IIT director, Mr.R.Natarajan, is said to have conducted an inquiry into the matter, perhaps sensing that all was not well with the evaluation process. The institute was spurred into further action when the regional head of the National Commissioner for the Welfare of SC/ST wrote a letter to the director asking him to not to admit B.Tech students till Sujee's case was settled.

Meanwhile, Sujee, unable to bear her agony, tried to kill herself and was admitted to Apollo Hospital here. The PDK alleged that the girl attempted suicide even for a second time.

When contacted in her hostel room at the IIT, she refused to talk about her suicide attempts. "I'm thrilled that I finally got what I wanted." she said.

Her parents too were unwilling to talk to the media. Sujee's father Mr.Surendra Babu, is a sales executive at an Agro company in Bhimavaram.

Mr.A.Sathyanarayana, assistant director of the National Commission for SC/ST and in charge of Tamil Nadu and Pondicherry, told The Statesman:"I went through Miss Teppal's papers. I was convinced there might have been some discrimination. There could have been some mischief in the evaluation of her test papers for the preparatory course".

Mr.Sathyanarayana,however, preferred gentle persuasion with the IIT,

realising that a prolonged legal battle would achieve little. "The IIT director was indeed magnanimous in giving the girl another chance," he said.

Faced with chances of being dragged into a controversy, the institute, quite unusually, put the girl and five others through an intensive one-week course. While three of them failed, Sujee sailed through, topping the list. She opted for the five year "Dual Degree Programme" in the much sought after communications engineering course.

The institute has claimed it had resorted to the unusual procedure only because Sujee had made "tearful representation to the director". Denying reports that he had been pressured by the Andhra Pradesh chief minister into admitting the girl, Mr.Natarajan, said:"We have a tough and transparent admission procedure". Sujee belongs to the Kammara tribe of Bhimavaram in Andra Pradesh.

The Director said children of at least 15 former IIT directors had failed to pass the JEE.

The PDK had put up posters all over the city, giving details of the case and distributed booklets alleging discrimination against Dalits by the IIT.

The party alleged that the IIT, Madras, has flouted all reservation norms while admitting students and selecting faculty members.

Mr.Natarajan refuted the allegation, saying: "We are strictly following all the constitutional provisions and the rules laid down by the human resources development ministry and the procedures and operations are being closely monitored and certified by parliamentary committee".

Perhaps what made the matters worse for the IIT was Sujee's academic record. She was a meritorious student all through. In the first year of her Intermediate course, she had scored a centum in Physics and in the second and final year she got 90.75 per cent Maths, Physics and Chemistry was 94 per cent.

She had appeared for the Engineering and Medical Common Engineering Test the entrance examination in Andhra Pradesh, standing first in the ST category."

b)The complainant further alleges that in the said news item, Periyar Dravidar Kazhagam, an off shoot of Dravidar Kazhagam, accused the Indian Institute of Technology of deliberately failing the girl in Physics after the one year preparatory course in B.Tech. The girl had reportedly scored brilliantly in Chemistry and Mathematics, raising doubts about the evaluation of her Physics paper. The paper also read that enquiry showed that she was deliberately failed in the Physics paper and highly placed sources told that the Physics teacher punished her for being too smart for him, using easier methods to solve problems. It is further stated that one Mr.Sathyanarayana, Assistant Director for the National Commission for SC and ST and in charge of

Tamil Nadu and Pondicherry told the first accused "I went through Miss Teppal's papers. I was convinced there might have been some discrimination. There could have been some mischief in the evaluation of her test papers for the preparatory course." However Mr.Sathyanarayana has denied the same in a communication to the Director of Indian Institute of Technology and besides the above said averments, the report further states "Perhaps what made the matter worse for the Indian Institute of Technology was Sujee's academic record." "Meanwhile, Sujee, unable to bear her agony, tried to kill herself and was admitted to Apollo Hospital here. The PDK alleged that the girl attempted suicide even for a second time." According to the complainant, the said report is totally false and in spite of Sujee declining to confirm the suicide story, publication has been made only with the sole intention of lowering or tarnishing the image of the Indian Institute of Technology. Further, had the first respondent, who is the correspondent, made inquires in the institute before publishing the above said news item, he would have known the true facts that Sujee had failed to qualify in the Joint Entrance Exam for admission into the Indian Institute of Technology in the year 1999, on merits despite fixing the lower cut off marks for SC and ST students. Therefore, a special one year preparatory course was given in Physics, Chemistry, Mathematics to enable them to cope up with their course to B.Tech dual degree M.Tech programmes. After successfully completing it, Sujee joined the Preparatory course 1999 along with 22 others and that in February 2000, Sujee's father was informed by the Co-ordinator of preparatory course that her performance was not up to the mark in Physics in first term of the course and she must put in a great effect in that subject; that the father of Sujee sent a reply to the Director, thanking him for the suggestions made and assured that his daughter would do well in future. However, Sujee did not succeed in the examinations. The further contention of the complainant is that the said news items mentioned supra is totally false and has been made recklessly and without due care and caution that the statement will harm the reputation of the complainant and had made defamatory statements particularly, the head line that Teacher punished Sujee because she was too smart. The petitioner being the Editor-in-Chief, without verifying the truth or otherwise, had made the imputation and hence is alleged to have committed offence punishable under Sections 500 r/w 34 IPC. The magistrate has taken cognizance of the complaint and has served summons to the accused.

3.The petitioner, who is the second accused in the case and has been described as Editor-in-Chief of "Statesman" submits that he being the Editor-in-Chief cannot be prosecuted for the said offence but it is only the editor alone who is liable to be prosecuted. The second contention is that a reading of the entire complaint would not disclose that the said publication affected the reputation of the institution in the minds of the general public, which is the essential ingredients to punish the publishers.

4.The learned counsel for the petitioner would first submit that in respect of the ground that the Editor-in-Chief cannot be prosecuted but only the editor could be prosecuted would rely on Section 7 of Press Registration and Books Act (herein after referred to as 'the Act'), in which it is mentioned that an editor of the newspaper whose name is printed as the editor

to that publication alone is liable to be prosecuted for any of the offence for such libellous publication. In support of his contention, he would also place reliance on the decision reported in K.M.Mathew Vs. State of Kerala and another reported in (AIR 1992 Supreme Court 2206) in which their Lordships have stated that a Editor-in-Chief cannot be prosecuted, but only an Editor could be prosecuted in terms of Section 7 of the Act. They have held that the prosecution under Section 7 of the Act could be launched only against person whose name is printed as Editor. As required under Section 5(1) of the said Act there is a mandatory presumption that the person whose name is printed, is deemed as Editor of the entire portion of the newspaper or which a copy is produced.

5.The learned counsel also in fairness placed the latest decision of the Supreme Court reported in K.M.Mathew Vs. K.A.Abraham and others (2002(6) Scale 82) wherein the decision referred supra has been considered and their Lordships have held that by Section 7 of the said Act, if a presumption is caused to Editor whose name is printed in the newspaper as Editor he shall be held to be the Editor in any civil or criminal proceedings in respect of that publication and he shall be punished; and they have also held that if the Managing Editor, Resident Editor or Chief Editor, who does not come under the category mentioned under Section 7 of the said Act is to be prosecuted, then there must be enough material to indicate that the said publication has been made with the knowledge of the above mentioned persons and they were responsible for such publication. If that is so, they can also be prosecuted. However, the learned counsel would submit that this does not apply to the facts of this case in so far as the complaint does not disclose that the said publication has been made with the knowledge of the Editor-in-Chief and consequently this decision does not apply to the facts of the present case and therefore on this ground, the proceedings have to be quashed.

6.The learned counsel for the respondent while countenancing the argument of the petitioner would first submit that at the bottom of every page of the Newspaper, including the page where the above news item finds a place, printer's name has been published and the name of Thiru. C.R.Irani has been published titling him as Editor-in-Chief. There is no separate clause by the designation Editor. Therefore, for all practical purposes, it has to be construed that presumption under Section 7 of the Act would apply to this person as he is the person named in the end of the news item as Editor-in-Chief, in the absence of a column as Editor.

7.It is worth going back again to the decision referred above wherein their Lordships have clearly stated that presumption under Section 7 is on the editor whose name is printed in the news item as Editor and he shall be liable for the prosecution. In the present case, since Mr.Irani's name finds a place under the caption Editor-in-Chief, in the absence of a separate clause as Editor, Irani is the one to be prosecuted.

8.the learned counsel for the respondent further argued that immediately after the said publication, notice was addressed to the Editor, Statesman, Chowranjee Square, Esplanade, Culcutta-1 dated 30th August 2000, indicating about the above said publication and the falsity of the same, among

other things. A reply had been received by him through the Advocates of the petitioner, dated 9th September 2000, wherein reference has been made to the letter addressed to the Editor and it is also mentioned that the same has been sent on the instructions of the Editor-in-Chief and Managing Director. Therefore, it has to be construed that there is no post as Editor who could have instructed the counsel, but every thing has been done by the Editor-in-Chief which indicates that he was responsible for the said publication. In continuation of the above said argument, the learned counsel for the respondent also drew my attention to the averments in the complaint wherein at paragraph 5 it has been clearly stated that the said libellous publication has been published by the second and third accused, the second accused being the petitioner herein, without verifying the truth or otherwise of the information given by the first accused had published the news item. The second accused (petitioner) has deliberately and intentionally failed to check the correctness or other wise of the news item. Hence the second accused (petitioner) is also equally responsible for the publication of the said defamatory item. Therefore, this in my opinion clinches the issue beyond any pale of doubt that he could also be prosecuted and hence I am not able to accept the contention of the learned counsel for the respondent in so far as this argument is concerned.

9.Coming to the ground namely that the complaint does not disclose imputation directly or indirectly in the estimation of others which lowers the moral or intellectual character of that person, in other words, the learned counsel would argue that the said publication has not affected the moral or intellectual character of that person in the minds of the right thinking people.

10.I am afraid, I am not able to accept this contention, since there is a specific averment in the complaint that the said publications are totally false and had been published with a view to tarnish the image of the institution and on account of such publication, the reputation has been lowered. It is averred alleged that several persons rang up the Director and other Senior faculty members also wrote to him expressing their anguish on reading the said report and there was a stir in the campus. Therefore, nothing traverses beyond these averments which clearly establish that, prima facie there are materials to disclose that such an imputation has, in fact affected the reputation of the institution. However, it is open for the petitioner to raise all the contentions and establish them in the course of the trial. With these observations, I feel that there are no merits in this petition for quashing the proceedings. The petition fails and the same is dismissed. Consequently, Crl.M.P. No.2251 of 2001 is also dismissed.

11.It is represented by the learned counsel for the petitioner that the petitioner is a permanent resident of Calcutta and the case is posted in Madras and the petitioner finds extremely difficult to attend and report on all the hearings. I find that it is a genuine request made by the counsel and hence the learned Magistrate is directed not to insist on the presence of the petitioner for the hearings except on the day when substance of the charges should be read over and answering 313 statement and on the date of judgment. On all other occasions, the presence of the petitioner will be condoned on the

counsel filing a petition under Section 317 Cr.P.C.

INDEX: Yes
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To

1.The IX Metropolitan Magistrate, Madras

2.-do-Through the Chief Metropolitan Magistrate
Egmore, Madras